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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 34 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

ADVANCE CONSRUCTION CO.PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 34 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred the following questions of law arising from cross references under Section 256(1) of the Income Tax Act,1961 (the Act).

At the instance of the Revenue :

"1. (1) Whether, the Tribunal is right in law and on facts in deleting the addition of Rs.48,633/- being provision for contingencies?

(2) Whether, the Tribunal is right in law and on facts in holding that the assessee company is an industrial company ?

At the instance of the assessee :

"Whether, the Tribunal was justified in the facts and in the circumstances of case and in accordance with law in upholding the decision of the tax authorities in confirming the additions in respect of deposits of Shri Punjabhai D.Patel Rs.50,000/-, Smt.Jevantiben P.Patel Rs.35,000/and Shri N.V.Patel Rs.35,000/- vis-a-vis the provisions of Sec.68 of the Act ?"

2 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the Revenue and Mr.J.P.Shah, learned Advocate for the assessee.

3 It is common ground between the parties that the two questions referred for opinion of this Court at the instance of the revenue stand concluded by decision dated 25/11/2004 rendered in Income Tax Reference No.175 of 1991 in assessee's own case and it is not necessary to set out any facts or contentions in detail.

4 The Tribunal in its impugned order has followed assessee's own case for Assessment Year 1982-83 and no independent reasons are assigned. In the circumstances, the two questions referred to the Court at the instance of the revenue stand answered in favour of the assessee and against the revenue for the reasons stated in earlier decision of this Court rendered in Income Tax Reference No.175 of 1991.

5 In so far as question at the instance of the

revenue is concerned, Mr.J.P.Shah, learned Advocate for the assessee, under instructions, does not press the question and, hence, the same is returned unanswered as not pressed.

6 In the result, the reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt